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APPLICATION NO. 09/244,788	FILING DATE 02/05/99	FIRST NAMED INVENTOR PARIKH	ATTORNEY DOCKET NO. 002010/PDB/P
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MM92/0912

EXAMINER PHAM, T
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ART UNIT 2013	PAPER NUMBER
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DATE MAILED: 09/12/00 #8

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/244,788**

Applicant(s)  
**Suketu A. Parike**

Examiner  
**Thanhha Pham**

Group Art Unit  
**2813**



☒ Responsive to communication(s) filed on Jun 23, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-42 is/are pending in the applicat

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-42 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-40, drawn to a method of forming a structure on a substrate, classified in class 438, subclass 631.
  - II. Claim 41, drawn to a device, classified in class 257, subclass 758.
  - III. Claim 42, drawn to an apparatus for controlling the formation of fabricated structure, classified in class 118, subclass 695.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the device invention II can be made by another materially different process. For example, the sacrificial etch segment in the etch stop positioned between the first and second trench can be formed by selective deposition or lift-off technique the etch stop layer wherein the etch stop including a defined patterned (defined first and second via patterns, and defined sacrificial etch segment pattern) instead of forming the etch stop then etching the etch stop to form first and second via patterns and sacrificial etch segment pattern as in the invention I.

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3. Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process invention I can be performed by another materially different apparatus -- for instance, the process invention I can be performed in an apparatus without a controller adapted for interacting with plurality of fabrication station.

4. Because these inventions are distinct for the reasons given above, the inventions have acquired a separate status in the art because of their recognized divergent subject matter as shown in their different classification, the search required for any Groups I-III is not required for the other two groups and separate examination would be required, restriction for examination purpose as indicated is proper.

5. This application contains claims directed to the following patentably distinct species in the claimed invention I

a. Species IA, claims 1-32, drawn to a method of forming a structure as an embodiment disclosed in figs 5('s)-9('s) specification pages 10-18 and page 19 lines 1-28.

b. Species IB, claims 33-40, drawn to a method of forming a structure as an embodiment disclosed in figs 10A-10J specification page 19 lines 30-32 and pages 20-21.

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Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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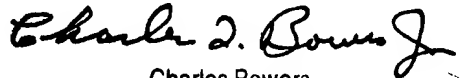
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanhha Pham whose telephone number is (703) 308-6172. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Bowers, can be reached on (703) 308-2417. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-3432.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

TSP

September 11, 2000



Charles Bowers  
Supervisor Patent Examiner  
Technology Center 2800